IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 72 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? 1 & 2 YES; 3 to 5 NO

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PARIKH GOPALBHAI KRISHNAKANT - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR GI DESAI for Applicant(s) : 1,
MR SS PATEL ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 20/11/2006

ORAL JUDGMENT

1. The petitioner has approached this Court under section 397 of the Code of Criminal Procedure, 1973 (for short “the Cr.P.C.”)to

challenge the order dated 11.2.1998 of the learned Special Judge, Vadodara in ESTP Case No.24 of 1995, whereby the application of the petitioner to drop the proceedings on the ground of limitation was rejected.

2. The original application of the petitioner appears to have been based upon the incorrect premises that, since the offence alleged against the petitioner was required to be tried summarily under the provisions of section 12-AA of the Essential Commodities Act, 1955 (for short “the Act”), the maximum punishment that could be awarded to the petitioner was imprisonment of two years and, therefore, the provisions of section 468 of the Cr.P.C. applied so as to bring into operation the bar of limitation prescribed therein. The petitioner relied upon the facts that the premises of the petitioner was inspected on 29.4.1992 and, after obtaining necessary sanction of the Collector, FIR was lodged on 29.6.1994 and, after investigation, chargesheet was filed on 3.7.1995. Thus, the chargesheet came to be filed three years after the date of the alleged offence, according to the petition.

3. The learned A.P.P. pointed out that the chargesheet was filed to prosecute the accused for the offence punishable under section 7 of the Act which prescribed punishment of imprisonment for a term which may not be less than three months but which may extend to seven years and fine. Therefore, the provisions of section 468 of the Cr.PC. did not at all apply to the facts of the case, according to the submission.

4. Neither the record of the case has thrown any light upon the punishment to which the petitioner was exposed, nor has the learned counsel for the petitioner made any submission to controvert the legal aspect and the prescription of higher punishment for the offence punishable under section 7 of the Act. Therefore, there is no reason to invoke the bar of limitation in the facts of the present case, as, *ex facie*, the provisions of section 468 of the Cr.PC. may not apply in the facts of the case. As held by the Supreme Court in ***Nirmal Kanti Roy v. State of West Bengal [AIR 1998 SC 2322]***, the provision of section 12-AA (1) (f) does not have the effect of amending section 7 by making the offence punishable only upto two years. The learned A.P.P. also pointed out that the time required and taken by the complainant in obtaining the sanction from the Collector was also not

calculated or excluded by the applicant.

5. In the above facts and circumstances, the impugned order dated 11.2.198 is not required to be set aside, but the trial is required to be proceeded in accordance with law in the interest of justice. Accordingly, the petition is dismissed, Rule is discharged and interim relief is vacated with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)